

CONTRACT NO. 473-17-00004
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS
AND
DYONYX, L.P.

This contract for the development of a cybersecurity and physical security outreach program is between the Public Utility Commission of Texas, an agency of the state of Texas, with its office located at 1701 N. Congress Ave., Austin, Texas 78701, and Dyonyx, L.P., a Texas corporation, with offices at 1235 N. Loop West, Suite 1200, Houston, Texas 77008.

Article 1. DEFINITIONS

When used in this Contract, the following terms shall have the following meanings:

1.1 “Public Utility Commission,” “PUCT,” or “Commission” means the Public Utility Commission of Texas acting through its Executive Director and the agency’s designated Contract Administrator.

1.2 “Contractor” includes **Dyonyx, L.P., “Dyonyx”**, and any successors, heirs, and assigns.

1.3 “Services” means any and all services performed and any and all goods and products delivered by Contractor as specified in Attachment A, Statement of Work (SOW).

Article 2. COMPENSATION

2.1 Compensation. Contractor agrees to provide all Services (including labor, expenses, and any other services) described in Attachment A, SOW, as follows:

Compensation will be for the firm, fixed price of \$357,000.00, to be paid 25% after acceptance of the preliminary report due June 22, 2017, 50% after acceptance of the final report, 25% after final approval of the report (including presentation to, and acceptance by executive management).

Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT’s written authorization to increase its fee. The Contractor must document the changes in the scope of Services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this Contract before the Contractor performs any Services for the increased fee or may invoice the increased fee.

2.2 Payment Process. Contractor shall submit a statement for services or invoice to the PUCT Contract Administrator no later than the 15th day of the month after the month that the Services were performed. The invoice must contain the name of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, etc.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the Contract. The statement or invoice must include the vendor identification number issued by the

Texas Comptroller or Contractor's federal taxpayer identification number, a description of the Services provided, and the name and division of the PUCT Contract Administrator.

Contractor shall submit the statement or invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

2.3 Payment for Services. Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this Contract.

2.4 Payments made to Subcontractors. Contractor shall pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment shall be overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Sec. 5.1).

2.5 Records. Contractor and its subcontractors, if any, shall maintain records and books of account relating to Services provided under this Contract. Contractor shall, for a period of seven (7) years following the expiration or termination of this Contract, maintain its records (electronic and paper) of the work performed under this Contract. Records include, but are not limited to correspondence concerning the subject of this Contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Records do not include utility-specific data that is collected only to be aggregated and/or anonymized. Contractor shall make all records that support the performance of Services and payment available to PUCT and/or its designees or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT Contract Administrator.

2.6 Sole Compensation. Payments under this Article are Contractor's sole compensation under this Contract. Contractor shall not incur expenses with the expectation that the PUCT or any other agency of the state of Texas will directly pay the expense to a third-party vendor irrespective of the reason for incurring those expenses.

Article 3. CONTRACT ADMINISTRATION

3.1 PUCT Contract Administration. The PUCT designates **Cody Mulla** to serve as its primary point of contact and Contract Administrator throughout the term of this Contract. Contractor acknowledges that the PUCT Contract Administrator does not have any authority to amend this Contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission or its authorized designee, Executive Director Brian H. Lloyd.

3.2 Contractor Contract Administration. Contractor designates its Contract Administrator as follows: **Ron Blume, P.E.**

3.3 Reporting. Contractor shall report directly to the PUCT Contract Administrator and shall perform all activities in accordance with reasonable instructions, directions, requests, rules, and regulations issued during the term of this Contract as conveyed to Contractor by the PUCT

Contract Administrator.

3.4 Cooperation. The Parties' Contract Administrators shall handle all communications between them in a timely and cooperative manner. The Parties shall timely notify each other by email or other written communication of any change in designee or contact information.

3.5 Inquiries and Prompt Referral. Contractor understands that the PUCT does not endorse any vendor, commodity, or service. Contractor, its employees, representatives, other agents, or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Contract or the Services or project to which this Contract relates or which mentions the PUCT without the prior approval of the PUCT. Contractor will promptly refer all inquiries regarding this Contract received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

Article 4. REPORTS AND RECORDS

4.1 Written Reports. Contractor will provide written reports to the PUCT in the form and with the frequency specified in Attachment A, SOW, or as otherwise agreed in writing between the Parties.

4.2 Distribution of Consultant Reports. PUCT shall have the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. PUCT shall also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that PUCT may assert for the report or any portion thereof.

Article 5. SUBCONTRACTING PARTIES

5.1 Use of Subcontractors. The Parties acknowledge and agree that at the time of execution of this Contract, Contractor intends to perform the Services required under this Contract using its own employees. Contractor will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7.

5.2 Sole Responsibility. Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all such work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this Contract.

5.3 Prime Vendor Contract. The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

Article 6. TERM, SUSPENSION, AND TERMINATION

6.1 Term. The term of this Contract shall begin on May 1, 2017 or the date signed by the last

party to sign, the latter of the two and shall continue in effect until April 31, 2021 unless sooner terminated under Sections 6.3 and 6.4 of this Contract.

6.2 Termination for Cause by the PUCT. If Contractor is in default of any material term of this Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this Contract for default and shall have all rights and remedies provided by law and under this Contract. If PUCT terminates Contractor under Article 18.12, PUCT need not provide any notice or opportunity for curing the default.

6.3 Termination for the Convenience of the PUCT. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this Contract whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided. The PUCT shall not be liable for any damages and/or loss to Contractor as a result of termination for convenience.

6.4 Transfer of Duties. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption to the provision of Services.

6.6 Remedies for Breach. All remedies available to PUCT for breach or anticipatory breach of this Contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunction relief, and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.6 Survival. In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Sections 2.5, 2.6, 3.5, 4.2, 6.5, 7.5, 9.2, 9.4 through 9.6, 17.2 and 19.1 through 19.4, 19.9 and Articles 1, 10, 11, 12, 14, 15, 16, 20, 21, 23, and 28 shall survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 Material Change Requests. PUCT may propose changes to Attachment A, SOW. Upon receipt of a written request from the PUCT for a change to Attachment A, SOW, Contractor shall, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this Contract. No changes to Attachment A, SOW, will occur without the Parties' written consent as provided in accordance with the terms stated in this Contract.

7.2 Changes in Law, Rules, or Rulings. Subsequent changes in federal or state legislation, rules and regulations or rulings by the PUCT may require modification of the terms of this Contract, including an increase or decrease in Contractor's duties or compensation. In the event of such subsequent changes to statutes, rules, and/or regulations, the PUCT and Contractor shall negotiate the terms of a contract modification in good faith and incorporate such modification into this Contract by written amendment.

7.3 No Assignment of Duties. This Contract shall be binding upon and inure to the benefit of

the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided however that Contractor shall not otherwise, without the prior written consent of the PUCT, assign or transfer this Contract or any obligation incurred under this Contract. Any attempt by Contractor to assign or transfer this Contract or any obligation incurred under this Contract, in contravention of this paragraph, shall be void and of no force and effect.

7.4 Amendments and Modifications. This Contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this Contract.

7.5 Binding on Successors. The terms of this Contract shall be binding on any successor organization of any of the Parties.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Warranty of Performance. Contractor represents, warrants, and covenants that it will perform the Services outlined in Attachment A, SOW, in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

8.2 Warranty of Services. Contractor warrants that the Services shall be rendered by the qualified personnel named in Section 19.8 of this Contract. If Services provided under this Contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

9.1 Risk of Loss. The risk of loss for all items to be furnished hereunder shall remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss shall pass to the PUCT.

9.2 Ownership. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights shall remain the property of the third party, all finished materials, conceptions, or products created and/or prepared for on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of Services hereunder, shall be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the Contract. Notwithstanding the foregoing, materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this Contract. The PUCT shall retain the right to implement the outreach program contemplated in Attachment A, Statement of Work using its own staff, or using a contractor, either Dyonyx or another contractor, at its own discretion. The PUCT shall also retain the right to modify the program in any way.

9.3 Licensed Software. With PUCT's advanced written consent, contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing Services under this Contract. Contractor shall provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing Services under this Contract.

9.4 Prior Works. Except as provided herein, all previously owned materials, conceptions, or

products shall remain the property of Contractor and nothing contained in this Contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.5 Trademarks. The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this Contract, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this Contract does not give the PUCT any rights of ownership in the trademark or the software.

9.6 Program Information. Program information, data, and details relating to Contractor's Services under this Contract shall be maintained separately from Contractor's other activities. Contractor shall undertake all reasonable care and precaution in the handling and storing of this information.

9.7 Provision to be Inserted in Subcontracts. Contractor shall insert an article containing paragraphs 9.2 and 9.6 of this Contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Contract.

Article 10. PUBLIC INFORMATION

10.1 Texas Public Information Act. (Texas Government Code Chapter 552). The Parties acknowledge that notwithstanding any other provisions of this Contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the Commission. The Commission will notify Contractor of requests for Contractor's information as provided under the PIA.

10.2 Agreement Not Confidential. The Parties acknowledge that not all terms of this Contract may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 Contractor's Duty to Provide Public Information. Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. For the purpose of Section 10.3 of this contract, paper documents, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files shall be considered "accessible by the public," unless another format is specified by the PUCT, at the PUCT's sole discretion. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the Texas Public Information Act, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor's information or data; it shall be Contractor's sole responsibility to do so.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 No Conflicting Relationships. Contractor certifies to the Commission that no existing or contemplated relationship exists between Contractor and the Commission that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State

of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the Commission.

11.2 Prohibition on Transactions with Parties Adverse to Commission. Contractor agrees that during the term of this Contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the Commission or that has interests that are directly or indirectly adverse to those of the Commission. The Commission may waive this provision in writing if, in the Commission's sole judgment, such activities of the Contractor will not be adverse to the interests of the Commission.

11.3 Notice of Conflict. Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. Contractor's failure to do so shall be grounds for termination of this contract for cause, pursuant to Section 6.3.

Article 12. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the PUCT, the State of Texas, and its officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this Contract. Contractor shall have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that the PUCT may participate in the defense with counsel of its own choosing. Any defense shall be coordinated by contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and the PUCT agree to furnish timely written notice to each other of any such claim.

If all or any part of the Deliverables is the subject of any claim, suit, or proceeding for infringement or misappropriation of any Intellectual Property Right, Contractor may, and in the event of any adjudication that the Deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the Deliverables or any part thereof is enjoined, Contractor shall, at its expense do one of the following things: (i) procure for PUCT the right under such patent, trademark, copyright or trade secret to fully use the Deliverables or the affected part thereof; or (ii) replace the Deliverable or affected part thereof with another non-infringing Deliverable; or (iii) suitably modify the Deliverable or affected part thereof to make it non-infringing.

Article 13. INSURANCE

Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas shall be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee.

13.1 Minimum Insurance. Contractor shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

(a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations - \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;

(b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and

(c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.

The PUCT and the State of Texas shall be named an additional insured on the commercial liability and automobile policies.

Insurance coverage shall be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

13.2 Certificates of Insurance. Contractor shall furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the Effective Date of this Contract, and upon request thereafter. Contractor shall provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, shall constitute a material breach of this Contract. Contractor shall provide thirty (30) days written notice of any notice for renewal and/or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this Contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this Contract, this Contract shall be deemed entered into in the State of Texas and shall be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County,

Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract.

Article 17. COMPLIANCE WITH LAW

17.1 General. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 Taxes. Contractor agrees to comply with any and all applicable state tax laws that may require any filing with and/or payment to the State of Texas as a result of any action taken as a result of this Contract.

17.3 Workers' Compensation. Contractor agrees that it shall be in compliance with applicable state workers' compensation laws throughout the term of this Contract and any renewals or extensions thereof.

17.4 Conflicts. Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the Commission. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this Contract as necessary.

17.5 Compliance with Deceptive Trade Practices Act. Contractor shall comply with Texas Business and Commerce Code Chapter 17.

17.6 Compliance with Americans with Disabilities Act. Contractor shall comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

17.7 Prohibited Use of Appropriated/Other Funds. Contractor shall comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

17.8 Certificate of Interested Parties Form. At the time Contractor submits a signed contract to the PUCT, Contractor shall submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form can be found at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>. Contractor shall not perform any work under the contract, nor receive any compensation prior to filing the form with the Texas Ethics Commission.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and

agrees that a false certification may lead to termination of this Contract for cause.

18.1 Prohibitions on Gifts. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

18.2 Delinquent Obligations. Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 Terrorist Financing. The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov/>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/>

18.4 Antitrust. Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this State, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 Family Code. Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

18.6 Prohibited Compensation. Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this Contract.

18.7 Government Code. Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

18.8 Outstanding Obligations. Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 Contracting with Executive Head of State Agency. Contractor certifies this Contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former

Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 Buy Texas. Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

18.11 Hurricane Recovery. Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 E-Verify. Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) hired by the proposer to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

18.13 Debarred Vendors List. Contractor certifies that it is not on the Debarred Vendors List located at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

Article 19. GENERAL PROVISIONS

19.1 Relationship of Parties. Contractor is and shall remain at all times an independent contractor, and nothing in this Contract shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this Contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel. Contractor shall be solely responsible for achieving the results contemplated by this Contract, whether performed by Contractor, its agents, employees or subcontractors.

19.2 Non-Exclusivity. Nothing in this Contract is intended nor shall be construed as creating any exclusive arrangement between Contractor and PUCT. This Contract shall not restrict PUCT from acquiring similar, equal, or like goods and/or services from other entities or sources.

19.3 Taxes and Statutory Withholdings. Contractor acknowledges that it is not a PUCT

employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this Contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this Contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

19.4 Notice. Except as otherwise stated in this Contract, all notices provided for in this Contract shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Contract), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. Mail.

IF TO THE PUCT:

ATTENTION: Brian H. Lloyd, Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT Contract Administrator, and Jay Stone, CTPM, CTCM, at the same address.

IF TO CONTRACTOR:

ATTENTION: Kathleen Watkins (Kathleen.watkins@dyonyx.com)
1235 North Loop West, Ste 1200
Houston, Texas 77008

19.5 Headings. Titles and headings of paragraphs and sections within this Contract are provided merely for convenience and shall not be used or relied upon in construing this Contract or the Parties' intentions with respect thereto.

19.6 Export Laws. Contractor represents, warrants, agrees and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this Contract in violation of any such laws, rules or regulations.

19.7 Preprinted Forms. The use of preprinted forms, such as purchase orders or

acknowledgments, in connection with this Contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

19.8 Specific Personnel. Contractor has identified the personnel for this assignment ("Team"), as follows: Ron Blume, P.E., Tom Braudt, P.E., C.L. Turner, George Miserendino, Michael Toecker, P.E., and Ron Crowley.

Contractor warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor shall remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

19.9 Publicity. Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract or any results or findings based on information provided, created, or obtained to fulfill the requirements of this Contract shall be made without the prior written approval of the PUCT.

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and its attachment(s), the following are given preference in the order listed below:

- 1) The terms and conditions of this Contract;
- 2) Attachment A, SOW;
- 3) The contractor's proposal, including the contractor's Best and Final Offer, as amended on April 26, 2017.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve either party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full

particulars of the same in writing to the other party as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, either party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other party.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, such provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if such provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. *See* Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2014-2015 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. RIGHT TO AUDIT

Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

Article 28. ENTIRE AGREEMENT

This contract, including Attachment A, SOW, and Dyonyx's Proposal and Best and Final Offer dated April 26, 2017, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these Services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this Contract by specific reference.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of the latest date signed.

The Public Utility Commission of Texas

By: B. H. Lloyd

Brian H. Lloyd
Executive Director

Date Signed: May 10, 2017

Dyonyx, L.P.

By: Chuck Orrico

— Signed: Thursday, May 11, 2017 —

Chuck Orrico
Chief Executive Officer

Date Signed: _____

ATTACHMENT A

STATEMENT OF WORK

Contractor shall develop a comprehensive Cybersecurity and Physical Security outreach program ("Program") for Texas electric utilities, electric cooperatives and municipally owned electric utilities (collectively "Texas utilities"). Contractor shall perform appropriate research, and develop recommendations for the Program. Contractor shall deliver a report with the preliminary research, recommended Program design, and other required recommendations by June 22, 2017. The final work product, acceptable to PUCT, is due not later than August 31, 2017.

Contractor shall meet with the PUCT Executive Director, the PUCT Contract Manager, and any other staff designated by the PUCT at the PUCT's offices in Austin to present the final program no later than August 31, 2017. PUCT Commissioners and/or their staff may also attend the presentation. If required by law, the presentation will be scheduled as an Open Meeting of the Commission.

The program design should be such that it can be executed by either PUCT staff alone or contractor staff working with PUCT staff, as the PUCT's needs require.

The objective of the Program is to develop a framework for collaborative discussions between: the PUCT; "Texas Utilities" (defined in this contract as: Texas Electric Utilities (as defined in PURA § 31.002(6)); Texas Municipally Owned Utilities (as defined in PURA § 11.003(11)), and Texas Electric Cooperatives (as defined in PURA § 11.003(9))); the Electric Reliability Council of Texas (ERCOT); and the Texas Reliability Entity (TRE); regarding efforts being undertaken to secure critical electric infrastructure from cyber and physical vulnerabilities. The scope of the work to be completed under this contract is limited to "Texas Utilities" served by TRE.

Contractor is not required to engage or evaluate any utilities served by any other Regional Entity. The Program is not intended to be a traditional regulatory compliance review program but rather outreach to Texas utilities to evaluate holistic corporate culture and programs for infrastructure protection and assist in identifying areas for improvement. The Contractor's deliverables shall include the Project Plan and Schedule, as well as the deliverables described under the heading "Phase I – Research and Recommendations." The PUCT has decided not to pursue the work described as "Phase II" in the Request for Proposals at this time.

Project Plan and Schedule

Contractor shall develop a detailed project plan and schedule for Phase I with ten (10) business days of the execution of a contract and submit it to the PUCT Contract Administrator.

Phase I - Research and Recommendations

1. Identify, evaluate, and report on all existing requirements for securing critical electric infrastructure. This deliverable shall include:
 - An assessment of industry best practices and frameworks (including by not limited to those promulgated by NIST, ISACA, SANS, DOE, NERC CIP, or others) appropriate for use by Texas utilities;
 - Identification of resources available to Texas utilities to assist in evaluating the adequacy of cyber and physical programs including the establishment of internal and external audit programs and vulnerability assessments

2. Identify, evaluate, and report on current utility practices for securing critical electric infrastructure, highlighting current best practices. This deliverable shall include:
 - Identification of best practices for network segmentation, control systems inventory, procurement methods, defense-in-depth strategies, and recovery protocols;
 - Identification of best practices and resources regarding utilities' internal cybersecurity training programs including security, recognition of social engineering techniques, and password and authentication policies;
 - Identification of best practices for incident response, recovery and management; and
 - Identification of any other best practices and resources Contractor believes are appropriate.
3. Recommend a collaborative framework for information sharing between the PUCT, Texas Utilities, ERCOT, and the TRE during times of normal operations as well as during an emergency situations. This deliverable shall include:
 - Identification of opportunities for collaborative initiatives between PUCT, ERCOT, and TRE related to cyber and physical security;
 - A recommended annual schedule of visits by PUCT staff and/or Contractor to Texas utilities to discuss current efforts, frameworks, and systems utilized to mitigate the risk of cyber and physical threats to utility infrastructure
 - Identification of opportunities for improvement among Texas utilities to collaborate on information sharing, best practices, and mutual assistance with respect to cyber and physical security expertise
 - Recommendations for prioritizing program components based upon the needs and resources available to the PUCT. This should include, but not be limited to, a pilot program to target a representative sample of the intended audience before full implementation, but Contractor may propose alternatives to a pilot program, as well. (The goal is to ensure the most effective outreach possible while controlling costs.);
 - Performance and outcome measures for the success of the Program and a plan for assessing them;
 - Recommendations as to the adequacy of the portions of the Texas State Homeland Security Strategic Plan overseen by the PUCT as it relates to threats of extended utility outages from cyber or physical attacks on Texas utility infrastructure;
 - The tasks and deliverables identified and described by Contractor in pages ten (10) through twenty-two (22) of Dyonyx's proposal, as supplemented by Dyonyx's Best and Final Offer (April 26, 2017).

4. Deliverables to be provided to PUCT with Preliminary Report by June 22, 2017:

- Detailed Phase I project plan and schedule;
- Industry best practices for network segmentation, defense-in-depth, procurement and recovery protocols;
- Industry best practices for training programs;
- Incident response and recovery management best practices;
- Physical security best practices;
- Other best practices suitable for use with outreach program; and
- Preliminary report with outreach program design.

5. Final report shall be delivered to the PUCT not later than August 31, 2017, with documentation of the process of critiquing and refining the business model for PUCT, ERCOT, TRE, THS, and Texas Utilities, including normal operations and emergency situation scenarios.